APPEAL NO. 023000
FILED JANUARY 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 28, 2002. The hearing officer determined that appellant (carrier) is not relieved from liability because the claimed injury of respondent (claimant) did not arise out of an act of a third person intended to injure claimant because of personal reasons. Carrier appealed these determinations on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We reverse and render.

The facts of this case are not in dispute. Claimant testified that he was injured when he was assaulted in the parking lot next to his place of employment right after he arrived to go to work. Claimant said a third party pulled him from his car and beat him after stating that claimant had splashed water on him. The hearing officer determined that, pursuant to the access doctrine, claimant was in the course and scope of employment when the assault occurred and carrier was not relieved of liability. The hearing officer found that the assault arose out of "Claimant's parking his vehicle" and that it did not arise out of any quarrel that existed apart from the incident itself.

In this case, the hearing officer determined that although claimant had not yet begun his work for the day, he was in the course and scope of employment through the access doctrine. It is true that the evidence shows that claimant was in the parking lot and on the way to work when the injury occurred. However, the access doctrine does not apply to resolve all of the issues in this case. Even if claimant had actually been working already and this incident occurred, this does not automatically mean carrier would be liable. *See,* e.g., Texas Workers' Compensation Commission Appeal No. 971538, decided September 18, 1997 (Unpublished). The issue that still must be answered is whether the injury arose out of an act of a third person intended to injure claimant because of a personal reason and not directed at claimant as an employee or because of the employment. Texas Employers' Insurance Association v. Dean, 604 S.W.2d 346 (Tex. Civ. App.-El Paso 1980, no writ). If so, carrier is relieved of liability. Section 406.032(1)(C).

If claimant's actual work had involved driving, then carrier would not have been relieved of liability in this case because injury would have arisen out of the way claimant performed his work of driving. *See* Texas Workers' Compensation Commission Appeal No. 982931, decided January 29, 1999 (Unpublished). However, claimant's work did not involve driving. The assault had to do with claimant's parking of his vehicle, but claimant does not park vehicles as a part of his work. The assault did not have to do with claimant's work as a customer service representative just because it occurred in

the employer's parking lot or while claimant was going to work. The fact that it occurred in the parking lot does not mean that, because of the work, the interaction was required or that the injury was connected with the employment. *See generally* Texas Workers' Compensation Commission Appeal No. 982151, decided October 23, 1998 (Unpublished). We conclude that the hearing officer erred in determining that the claimed injury did not arise out of an act of a third person intended to injure claimant because of personal reasons and not directed at the claimant as an employee or because of the employment. We reverse that determination and render a decision that carrier is relieved of liability.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Judy L. S. Barnes
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Terri Kay Oliver
Appeals Judge